

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

THE STATE OF WISCONSIN

Plaintiff,

CASE NO. 06-C-0582-C

v.

ABBOTT LABORATORIES, INC., ET AL.

Defendants.

**DEFENDANT DEY, INC.'S RESPONSES AND OBJECTIONS
TO PLAINTIFF'S SECOND SET OF INTERROGATORIES**

PLEASE TAKE NOTICE that pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Dey, Inc. ("Dey"), by its undersigned counsel, asserts the following responses and objections to Plaintiff's Second Set of Interrogatories to All Defendants (the "Interrogatories"), dated November 10, 2006, and propounded by Plaintiff State of Wisconsin ("Plaintiff," the "State," or "Wisconsin"), as follows:

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

1 Dey objects to the Interrogatories to the extent they seek to impose duties and obligations on Dey greater than Dey's duties and obligations under the Federal Rules of Civil Procedure. Dey will comply with its duties and obligations under the Federal Rules of Civil Procedure.

2. Dey provides its responses subject to the Protective Order, entered on November 29, 2005, in the action, *State of Wisconsin v. Abbott Laboratories, et al.*, in the Circuit Court of Dane County, Wisconsin.

3. Dey objects to the Interrogatories to the extent they are premature, vague,

ambiguous, unduly burdensome, overbroad, oppressive or duplicative, and not limited to the discovery of information which is relevant to the subject matter of this litigation or reasonably calculated to lead to the discovery of admissible evidence.

4. Dey objects to the extent that any of Plaintiff's Interrogatories seek documents or information not limited to sales in the State of Wisconsin on the grounds that such Interrogatories are overly broad, unduly burdensome, and do not seek the discovery of admissible evidence.

5. Dey objects to the Interrogatories as overly broad, unduly burdensome, and not reasonably calculated to lead to discovery of admissible evidence to the extent they seek documents or information concerning pharmaceutical products not at issue in this litigation. Dey will provide information relating only to pharmaceutical products identified in the Second Amended Complaint.

6. Dey objects to the Interrogatories on the grounds that they are unduly burdensome to the extent that they purport to require Dey to compile, analyze, compute, and/or summarize voluminous data or information that Plaintiff has the ability to create or analyze by reviewing the documents, information, or data that Dey has produced or will produce.

7. Dey objects to the Interrogatories to the extent they demand the production of documents or information that are privileged or otherwise protected against discovery pursuant to the attorney-client privilege, the work product doctrine, the joint defense privilege, the consulting expert rule, the common interest doctrine, or any other legally recognized privilege, immunity, or exemption from discovery. To the extent any such protected documents or information are inadvertently produced in response to the Interrogatories, the production of such

documents or information shall not constitute a waiver of Dey's right to assert the applicability of any privilege or immunity to the documents or information, and any such documents or information shall be returned to Dey's counsel immediately upon discovery thereof.

8. Dey objects to the Interrogatories to the extent that they demand the production of documents or information containing trade secrets, or proprietary, commercially sensitive or other confidential information.

9. Dey objects to the disclosure, under any circumstance, of trade secret information where the probative value in this litigation is greatly exceeded by the potential harm to Dey if the information were to fall into the hands of its competitors, and further asserts each and every applicable privilege and rule governing confidentiality to the fullest extent provided by the law.

10. Dey objects to these Interrogatories to the extent they seek documents or information already in Plaintiff's knowledge, possession and/or control, or information to which Plaintiff has equal access.

11. Dey objects to the Interrogatories to the extent that they demand the production of documents or information: (a) not within the knowledge, possession, custody, or control of Dey, their agents, or their employees; (b) publicly available; or (c) more appropriately sought from third parties to whom requests have been or may be directed.

12. These responses and objections are made without waiving or intending to waive: (a) any objections as to the competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, of any documents or information produced to respond to the Interrogatories; (b) the right to object on any ground to the use of documents or information

produced in response to the Interrogatories at any hearing, trial, or other point during this action;
(c) the right to object on any ground at any time to a demand for further responses to the Interrogatories; or (d) the right at any time to revise, correct, add to, supplement, or clarify any of the responses or objections contained herein.

13. The documents or information supplied herein are for use in this action and for no other purpose.

14. No response or objection made herein, or lack thereof, is an admission by Dey as to the existence or non-existence of any documents or information.

15. Dey objects to the Interrogatories to the extent that they demand the production of documents or information from outside of the statute of limitations applicable to the State's claims in this action, or beyond the time period relevant to this action. Dey objects to the Interrogatories as irrelevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that they purport to require production of documents or seek information relating to a period of time after the filing of the Complaint on or around June 3, 2004.

16. Dey objects to the Interrogatories to the extent they impose on Dey an obligation to search or produce electronic mail or other electronically stored data in any format on the grounds that such Interrogatories are overly broad, unduly burdensome, harassing, and not reasonably limited in scope.

17. Dey objects to the Interrogatories to the extent they purport to require Dey to create documents or data which do not already exist, on the grounds that such a requirement is

overly broad, unduly burdensome and to the extent that such a requirement is contrary to the Federal Rules of Civil Procedure.

18. Dey objects to the Interrogatories to the extent they seek deposition testimony and witness statements that are subject to protective orders in other jurisdictions.

19. Dey objects to the Interrogatories to the extent that they demand the production of proprietary documents or information of third parties.

20. Dey objects to any implications and to any explicit or implicit characterization of facts, events, circumstances, or issues in the Interrogatories. Any response by Dey that it will produce documents or information in connection with a particular Interrogatory, or that it has no responsive documents or information, is not intended to indicate that Dey agrees with any implication or any explicit or implicit characterization of facts, events, circumstances, or issues in the Interrogatories, or that such implications or characterizations are relevant to this action.

21. Dey objects to the Interrogatories as overly broad and unduly burdensome to the extent they require or seek to require Dey to: (a) produce documents or data in a particular form or format; (b) convert documents or data into a particular or different file format; (c) produce data, fields, records, or reports about produced documents or data; (d) produce documents or data on any particular media; (e) search for and/or produce any documents or data on back-up tapes; (f) produce any proprietary software, data, programs, or databases; or (g) violate any licensing agreement or copyright laws.

22. Dey objects to the Interrogatories as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent they seek

documents concerning any discontinued product dated after the date of such product's discontinuation.

23. Dey objects to the Interrogatories to the extent they seek information or documents relating to Dey's activities that are outside the scope of the allegations in the Second Amended Complaint.

24. Dey objects to the Interrogatories as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence to the extent that they seek information or documents compiled over more than a 13 year time period, i.e., from January 1, 1993 to the present.

25. Dey objects to the Interrogatories to the extent they demand production of documents or information relating to Dey's activities other than those which concern the State, on the grounds that such documents or information are neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

26. Dey reserves the right to assert additional objections to these Interrogatories as appropriate and to amend or supplement these objections and responses in accordance with the applicable rules and court orders and based on results of its continuing investigation.

27. Dey objects to these Interrogatories to the extent they exceed the number of Interrogatories allowed to be propounded under Rule 33 of the Federal Rules of Civil Procedure.

OBJECTIONS TO DEFINITIONS

1. Dey objects to Plaintiff's definition of "Average Manufacturer Price" or "AMP" as set forth in Definition No. 1 to the extent that it purports to establish an accurate or legally

significant definition of "Average Manufacturer Price" or "AMP," which is a term defined by federal statute.

2. Dey objects to the definition of "Defined Period of Time" as set forth in Definition No. 2 on the grounds that it is overly broad and unduly burdensome in that it seeks documents and information spanning a thirteen (13) year period. Dey also objects to this definition to the extent it calls for documents created after June 3, 2004, the date this action was commenced, on the ground that such documents are neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence. Dey further objects to this definition to the extent it seeks documents or information outside of the statute of limitations applicable to the claims in this action, or beyond the time period relevant to this action.

SPECIFIC RESPONSES AND OBJECTIONS TO INTERROGATORIES

The General Objections and Reservations of Rights and the Objections to Definitions stated above apply to and are incorporated into each and every individual response to the individual Interrogatories set forth below, whether or not expressly incorporated by reference in any individual response. Dey also responds and objects specifically to the individual Interrogatories as follows:

INTERROGATORY No. 6:

Do you contend that during the Defined Period of Time the State of Wisconsin was not prohibited by federal law from determining, and could have determined, the AMPs of the targeted drugs based on the Unit Rebate Amount for such drugs provided to the State by the federal government pursuant to Medicaid rebate statute, 42 U.S.C. § 1396r-8?

DEY'S RESPONSE AND OBJECTIONS

Dey objects to this Interrogatory because whether Wisconsin was "prohibited by federal law from determining.. .AMPs" calls for a legal conclusion. Dey further objects to this Interrogatory on the grounds that it is vague and ambiguous. Dey further objects to this Interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable doctrine or privilege.

Subject to the foregoing objections, and without waiving them, Dey states that, during the Defined Period of Time, Wisconsin was capable of determining Dey's AMPs for each of Dey's generic drugs based on the Unit Rebate Amounts.

INTERROGATORY NO. 7:

If the answer to Interrogatory No. 1 [sic] is anything other than an unqualified "no,":

- a. state all bases for such contention, and
- b. identify all documents that support such contention.

DEY'S RESPONSE AND OBJECTIONS

Dey objects to this Interrogatory as premature as discovery is not yet complete. Dey objects to this Interrogatory on the grounds that it is vague, ambiguous, overbroad, and unduly burdensome. Dey further objects to this Interrogatory to the extent it seeks a legal conclusion. Dey further objects to this interrogatory to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable doctrine or privilege. Dey further objects to this Interrogatory to the extent that it seeks information or production of documents: (a) already in Plaintiffs possession, custody or control; (b) not in Dey's possession, custody or control; (c) publicly available information or

documents; (d) documents or information equally available to Plaintiff; or (e) information or documents more appropriately sought from third-parties to whom subpoenas, document requests or Interrogatories should be directed.

Subject to the foregoing objections, and without waiving them, Dey states:

(a) Wisconsin could have determined the AMP for each of Dey's generic drugs during the Defined Period of Time based on the Unit Rebate Amount provided to Wisconsin by the federal government. The Unit Rebate Amount for generic drugs is 11% of the AMP. Therefore, by dividing the Unit Rebate Amount by 0.11, the corresponding AMP may be determined.

(b) Dey states that the following documents support its contention: (i) documents provided by the federal government to Wisconsin which contain Unit Rebate Amounts for Dey's drugs; (ii) documents in the possession of the federal government concerning the calculation of Unit Rebate Amounts for Dey's drugs; and (iii) documents in the possession of Wisconsin concerning Unit Rebate Amount and AMP.

Dated: December 13, 2006.

AS TO OBJECTIONS:

By: 
Jo Markson (State Bar No. 1018620)
John Moore (State Bar No. 1010235)

Bell, Gierhart & Moore, S.C.
44 East Mifflin Street
P.O. Box 1807
Madison, WI 53701
Phone: (608) 257-3764
Fax: (608) 257-3757
Attorneys for Defendant Dey, Inc.

Of Counsel:

Paul F. Doyle

Christopher C. Palermo

Antonia F. Giuliana

KELLEY DRY & WARREN LLP

101 Park Avenue

New York, New York 10178

Phone: (212) 808-7800

Fax: (212) 808-7897

State/Commonwealth of CA

} ss.

County of Alameda

Subscribed and sworn to (Or affirmed) before me

this 17 day of July, 2004 by fla



Name of Signor #1

(2)

Name of Signer #2

Nancy Kendall
Notary Public

Plate Notary Seal and/or Any Stamp Above

Other Required Information (Printed Name of Notary, Residency, etc.)

OPTIONAL

Though the Information in this section is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

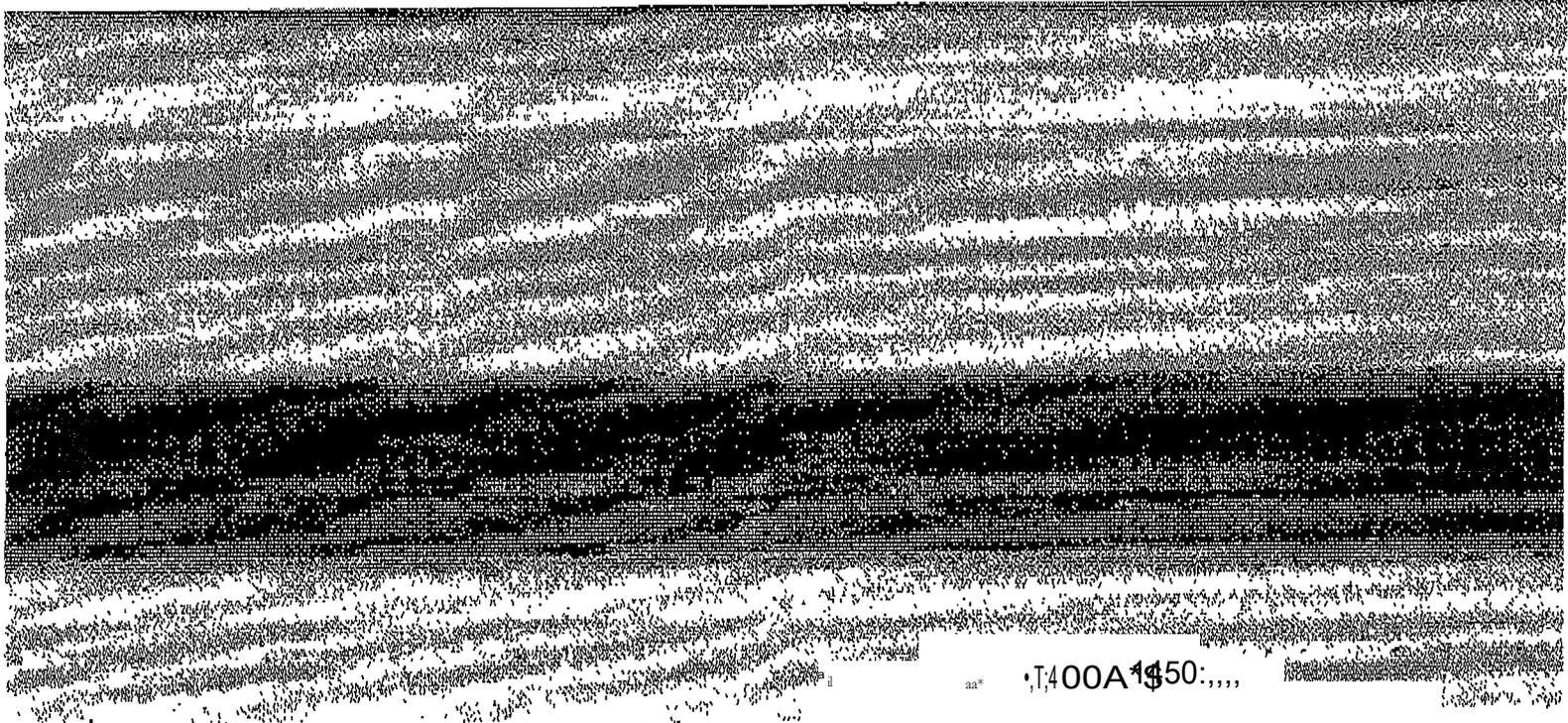
Title or Type of Document: 4

Document Date: 7/17/04 Number of Pages: 1

Signer(s) Other Than Named Above: fla

RIGHT THUMBPRINT OF SIGNER #1
Top of thumb here

RIGHT THUMBPRINT OF SIGNER #2
Top of thumb here



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 06-C-0582-C

AMGEN, INC., ET AL,

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of Defendant Dey, Inc.'s Responses and Objections to Plaintiff's Second Set of Interrogatories to be served on counsel of record by transmission to LNFS pursuant to Order of the Circuit Court of Dane County, Branch 7, Case Number 04-CV-1709, dated December 20th, 2005.

Dated this 14th day of December, 2006.

BELL, GIERHART & MOORE, S.C.
Attorneys for Defendant, Dey, Inc.

By: 
J. W. Markson
State Bar No. 1018620

Address:
44 East Mifflin Street, Ste. 1000
Post Office Box 1807
Madison, WI 53701-1807
Telephone: 608/257-3764
Facsimile: 608/257-3757